

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**August 3, 2011**

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Russell Moore, Scott Spendlove, Mark Hales, Sandy Naegle and Necia Christensen

**Those Absent:** Sioeli Uluakiola

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Claire Gillmor

**AUDIENCE:**

Approximately five (5) people were in the audience.

**B-6-2011**  
**Minor Variance**  
**4352 West Losee Drive (4355 South)**  
**R-1-8 Zone**

Ryan Braithwaite, representing Roger and Barbara Minor, is requesting a variance from Section **7-6-305(1)** of the West Valley City Code. This section requires that the minimum front yard setback be 25 feet and that the minimum side yard setback be 8 feet in the R-1-8 zone. The applicant is requesting a variance of 23 feet and 8 feet respectively in order to keep an existing carport cover.

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as lot 1269 of the Colony West No. 12 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in February 1978.
- ☐ The single family dwelling was constructed in 1978. The existing dwelling was built with a single car garage. From aerial photographs, it appears that insufficient room existed on the west side of the dwelling for a two car garage.
- ☐ The applicant was recently notified that an existing carport located at the southeast corner of the property was in violation of City setback standards. Section 7-6-305(1) of the City Code states that the required front yard setback for all properties is 25 feet. The City Code also states that the side yard setback be a minimum of 8 feet. In this case, the existing carport was constructed in the front setback approximately 2 feet behind the sidewalk and within 1 foot of the side property line. Thus, a variance of approximately 23 feet and 8 feet are being requested.
- ☐ In preparation of submitting a possible variance application, the property owner met with staff to discuss the situation. As staff visited with the applicant, explanations were provided about the 5 variance criteria. Mr. Minor's agent has prepared a packet of information for the Board's review. Contained within the packet are answers to the variance criteria.
- ☐ In the letter to the Board of Adjustment, Mr. Braithwaite addresses a previous variance granted by the Board of Adjustment. He mentions similarities between this application and one reviewed by the Board in 2010. Staff would like to remind the Board that each case is based on its own merits. Previous approvals and/or denials should not be considered by the Board for this particular application.
- ☐ The property in question is not typical of other lots in this subdivision. As mentioned in Mr. Braithwaite's answers to the variance criteria, the property does sit on a curvature of Losee Drive. As a result, the frontage of the property is much larger than the rear

portion. Because the rear portion is pinched, the property owners believe that this was the only reasonable location for the carport.

- As mentioned previously, staff has included the packet of information previously mentioned. Included are photographs of the carport and an aerial view of the property. Should the Board grant this variance, the applicant will need to obtain the necessary building permits from the City's Building Division.

Steve Lehman presented the application.

<u>Agent</u>	<u>Applicant:</u>	<u>Opposed</u>	<u>Favored</u>
Roger Minor	Ryan Braithwaite	Jeff Beck	Russ Brooks
4352 W. Losee Dr	3165 E. Millrock Dr #500	4338 W. Deno Dr.	4350 S. 3665 W.

### **Ryan Braithwaite**

Mr. Braithwaite, representing Roger & Barbara Minor, said the Minors have a one car garage and are being deprived of a substantial property right because only one car parking exists. He explained that Mrs. Minor has health issues and being denied the variance creates significant safety concerns.

Mr. Braithwaite reviewed the variance criteria with the Board of Adjustment:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

**The Minor's hardship results from the peculiar alignment & curvature of Losee Drive. As demonstrated by Exhibit C, the front of the property abuts the curved portion of Losee Drive. As a result, the property is fan shaped, with the front portion of the property being much wider than the rear portion. The width of the property gets smaller as it progresses from front to back. The sides of the property along the homes are very narrow & become narrower as the property progresses from front to back. This is peculiar to the property, and, as a result of the peculiar configuration, the Minors are deprived of the privilege of having a detached carport to protect their vehicles.**

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

**The frontage of the property is 107.96', but the rear property is just 47.17'. According to the plat map, there are no parcels of property in the vicinity with a shorter rear property line. As a result, the angle of the east boundary of the property is more acute than any other parcel in the vicinity, and there is not enough area between the home and the east property line to construct a carport without the**

**granting of a variance. In fact, because of the acuteness of the property's angles and its fan-shape, the only place to construct a detached carport is the place where the carport is currently located.**

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

**In the matter of the Fairbourn variance, which the Board approved in March 2010, the Board concluded that a covered carport is a substantial property right. Here, the Minors are also seeking a variance for a covered carport to protect their vehicles and property, and to provide shelter and shade. In addition, safety considerations support the granting of a variance because, as noted in the Fairbourn matter, covered carports promote safety during the winter months. Again, because of the peculiar configuration of the property, the carport could only be constructed where it currently exists.**

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

**As demonstrated by the attached photographs of the property, the Minors are good stewards of the property and maintain it beautifully. The carport is neat looking and does not detract from the clean and orderly appearance of the property. Additionally, the carport was constructed five years ago, and, during that time, the Minors have never received any complaints about the carport. In fact, at the variance hearing, the Minors expect to discuss with the Board the fact that they have discussed the carport with their neighbors and have received nothing but support for keeping the carport on the property. In short, the property is very well maintained, and because of its limited size, the carport does not detract from the subdivision.**

5. The spirit of the zoning ordinance is observed and substantial justice done.

**The spirit of the zoning ordinance is observed because the property is peculiarly configured, the carport has been in place for several years without any complaints received, it provides cover to a parked vehicle, it promotes safety, and the property is neat, organized and well maintained.**

#### **Roger Minor**

Mr. Minor explained that he had the structure built in good faith by a licensed contractor and five years later I am dealing with this problem. My wife has health complications with diabetes and the covered carport makes it easier for snow removal and helps address our safety concerns.

#### **Jeff Beck**

Mr. Beck said he would like to focus on some of the applicant's statements regarding hardship criteria. There are several properties with single car carports in the adjoining neighborhood and

the Minor's property is not unique. In fact, if the neighboring residents were to adhere to the 8' setback, most of the neighbors could not build without variances. In regards to the fourth criteria, the variance will not substantially affect the general plan and will not be contrary to the public interest; the Minor's trailer & vehicles are abutting their neighbor's vehicles and this creates a serious public safety hazard and I believe that area needs to be opened up.

In regards to the first criteria, literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance: I can't find a hardship. There is no reason why the carport needs to be in that location. Although their lot is not rectangular, it is not necessary to have carport there as they already have a single car garage. I would like to acknowledge the fact that

The zoning ordinances are designed to better neighborhoods. The structure is metal which I believe is better suited to an industrial zone and not compatible in a residential neighborhood, although the Minor's yard is beautifully maintained. The appearance of the construction materials is not up to the standards of the rest of the neighborhood.

#### **Russell Brooks**

Mr. Brooks said I believe the zoning ordinances will be reviewed by the City Council later this month. He questioned legal staff could this application be tabled after that meeting to a future date?

Claire Gilmor, West Valley City Attorney, responded this case is procedurally before the Board of Adjustment now. The application fees have been paid, the applicant is being legally represented, and the application is fully vested. It cannot be tabled to a future date to see if the laws are possibly changed and it is best to decide now on the present merits.

Mr. Hales questioned how many vehicles do the Minors have and who parks their car in the front? Mr. Braithwaite replied three vehicles and a trailer and Mr. Minor parks his car in the front.

Mr. Moore questioned did Mr. Minor decide where the carport would be placed or was the location recommended by the contractor? Mr. Minor responded that the contractor had recommended the location of the carport.

Mrs. Christensen questioned could the carport be converted to a double car garage? Mr Lehman stated there does not appear to be sufficient room to put another garage adjacent to the existing one.

#### **Discussion:**

Mr. Spendlove indicated that he did not believe all of the variance criteria have been met by the applicant. In regards to the third criteria, granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district, and asked how many covered parking spaces are a substantial property right.

Mrs. Christensen noted that the City now requires a two car garage, but that ordinance was not in effect when the applicant's carport was constructed.

The Board of Adjustment reviewed the variance criteria:

**1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

The applicant has stated that the shape of his lot is a hardship; however there are many other properties in the area with odd configurations. Mrs. Christensen remarked that most of the neighboring properties have an 80' frontage. However, I do believe there are some special circumstances associated with the property.

Mr. Moore stated I counted nine lots in close vicinity that have similar unique shaped lots and I do not believe the applicant's lot configuration is a special circumstance.

Mrs. Christensen responded I believe there is a hardship due to the shape of the lot. However, I don't know if Mr. Minor's lot is deep enough to enjoy covered parking for two vehicles. With the current zoning ordinances, the applicants don't have sufficient space in the rear yard setback to provide covered parking. Several members of the Board of Adjustment disagreed and stating they did not believe the applicant meets this hardship criteria.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

The Board noted that not every property in this neighborhood has a two car garage and there are several properties that have a single car carport. The shape of the property is not unique as there are many other properties in the neighborhood with lot configurations similar to the applicant's property.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mrs. Christensen expressed concern that there are safety issues due to the Minor's property and the adjacent neighbor's property being so close. The shape of the lot creates issues with visibility and safety which I personally witnessed when I visited the site. The Board pointed out that there are more two car garages, but there are also many single car carports in the neighborhood.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mrs. Christensen indicated that the Board has received letters from close neighbors stating that they are not opposed to the carport structure and stated that it does not bother them. Mr. Beck has stated that he is opposed to the variance, however he does not live in close proximity to the Minor's compared to the neighbor's who are not opposed to the variance request.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mrs. Christensen remarked I do believe the applicants meet the criteria regarding the spirit of the zoning ordinance, but there are safety issues with sight visibility. I do not believe the applicant has met the variance criteria on several of the other hardship criteria and do not believe the variance request should be approved.

Mr. Moore indicated that the ordinance is very clear and the spirit of the ordinance would not be served by approving the variance.

Mr. Spendlove expressed concern stating that the Board does not want to see carports or garages that extend out to the sidewalk. Mr. Beck has previously stated that he had counted at least 80 homes in the area with similar odd shaped lots.

Mrs. Christensen said that she would like to acknowledge that the Minor's home and landscaping are beautiful and very well maintained.

Ms. Naegle questioned legal staff if she is required to vote on this application.

Mrs. Gilmor responded if you believe you have a conflict of interest with this application; please disclose the conflict of interest.

Ms. Naegle expressed concerns that the current ordinances may be changed at a future date and stated that makes it difficult for me to vote on this application knowing this.

Mrs. Gilmor acknowledged that the City Council will be addressing these issues in the near future. However, currently this application is vested, although changes could be made at some point in the future. At the present time, the applicants are not in compliance with the ordinance, the carport is in violation of the ordinance, and the applicant is seeking a variance from the Board of Adjustment.

The Board questioned legal staff what happens if the application is denied?

Mrs. Gilmor responded whether the variance is granted or not, there are still logistics that need to be ironed out and the City Manager could appropriately address those issues. However, the City Manager cannot override the Board's decision. The Board of Adjustment

has the authority to decide if the application should be approved or denied, conversely the Board does not have authority to enforce the ordinances. However, those issues would be under the City Manager's scrutiny and he could assess any issues and make the best judgement on how to proceed.

Ms. Naegle questioned could I make a motion to continue this application?

Mrs. Gilmor responded regardless of what happens when the City Council reviews the ordinance, the laws pertaining to this application would not change. The date an application is made controls the laws that would be in effect for that particular application.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

### **Motion**

Mr. Spendlove stated I move that we deny the request for a variance.

Mr. Hales seconded the motion.

A roll call was taken.

Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	yes
Mr. Hales	yes
Chairperson Christensen	yes

**Motion:**      **Carries** **X** **Denied** \_\_\_\_\_

**Majority** **X**      **Unanimous** \_\_\_\_\_

### **OTHER**

The minutes from **July 6, 2011** were **approved**.

There being no further business the meeting adjourned at 7:15 p.m.

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Karon Jensen, Administrative Assistant